UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,207	09/30/2003	William A. Rundquist	6057-53100	7694

35690 7590 03/18/2008

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN, TX 78767-0398

EXAMINER	
BLAIR, DOUGLAS B	

ART UNIT	PAPER NUMBER
2142	

MAIL DATE	DELIVERY MODE
03/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/676,207	RUNDQUIST ET AL.	
	Examiner	Art Unit	
	DOUGLAS B. BLAIR	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claims 3-5 are objected to because of the following informalities: Claim 3 reads as "data to be send" in the second line of the claim when it should read "data to be sent". Claim 4 reads" transmitting packets in the high priority queue before transmitting packet in corresponding low priority queue". The second instance of the word "packet" should be plural. Claim 5 uses the word "associates" instead of "associated" in the second line of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The means in claim 14 seem to be directed towards the software functionality on the device since there is not disclosed any specific hardware for performing each function of the claimed means. Since the system of claim 14 is only directed towards software it does not fit into any of the statutory categories of invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the specified minimum rate" in line 7 of the claim. There is no specified minimum rate previously mentioned in the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,788,498 to McDysan in view of U.S. Patent Application Publication Number 2003/0177396 by Bartlett et al.

As to claim 1, McDysan teaches a method for transferring data between a wide area network and a computer system located on a local area network, comprising: receiving data from the wide area network at a digital device that is connected to both the wide area network and the local area network, the data being destined for a computer system attached to the local area network (col. 7, line 46-col. 8, line 2, the CPE edge router is the device); receiving a signal indicating that the data is to be transferred to the computer system at a specified bandwidth with guaranteed quality of service (col. 9, lines 8-25); formatting packets that contain the data to

indicate that the data is to be transmitted at the requested guaranteed quality of service (col. 9, lines 8-25); sending the packets that contain the data to the computer system, thereby establishing a communication link between the wide area network and the local area network that transmits data at the requested guaranteed quality of service (col. 9, lines 8-25); however McDysan does not explicitly teach that the local area network is an Ethernet type network.

Bartlett explicitly teaches a device for transferring data between a wide area network and a computer system located on an Ethernet type LAN with a guaranteed quality of service (paragraphs 120-121, terminal 305 is the device).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of McDysan regarding a device for providing a guaranteed quality of service for a data transfer between networks with the teachings of Bartlett regarding a device for providing a guaranteed quality of service for a data transfer between a WAN and an Ethernet LAN because McDysan suggests the use of Ethernet but does not explicitly mention it as the LAN and as illustrated by Bartlett Ethernet type networks are ubiquitous for LAN's. The result of combining McDysan and Bartlett would produce a predictable result.

As to claim 2, the McDysan-Bartlett combination combines to make claim 1 obvious.

Bartlett teaches a method of sending a signal from a network control system server to the digital device, wherein the signal indicates that the data is to be transferred to the computer system at a guaranteed quality of service (paragraph 131-137).

It would have been obvious to one of orindary skill in the Computer Networking art the time of the invention to combine the teachings of McDysan regarding a method for

implementing VPN functionality between a WAN and a computer system connected to a LAN with the teachings of Bartlett regarding a VPN server that signals how data is to transferred through a device because the VPN server can enhance the quality of service for VPN packets such as those taught by McDysan.

As to claim 3, McDysan teaches a method further comprising receiving a request for data to be send form a content provider to the computer system; and embedding priority information in the data, wherein the priority information signals that the data is to be delivered to the computer system at the rate higher than the requested guaranteed quality of service (col. 9, lines 8-25, McDysan teaches providing a guaranteed qos which by definition allows for higher than requested speeds).

As to claim 4, McDysan teaches a method further including placing the packets containing the data to be sent to the computer system in a high priority queue; and transmitting packets in a high priority queue before transmitting packets in corresponding low priority queues (col. 9, lines 8-25).

As to claim 5, McDysan teaches a method wherein the formatting step further comprises inserting priority information into header associated with the packets, wherein packets having headers with high priority information are transmitted before packets having headers with low priority information (col. 9, lines 8-25).

As to claim 6, McDysan teaches a method wherein receiving a signal indicating that he data is to be transferred at a guaranteed quality of service further comprises receiving a signal indicating that the data is to be transferred to the computer system at a rate higher than a specified minimum rate (col. 9, lines 8-25).

As to claim 7, it is rejected for the same reasoning as the preceding claims.

As to claim 8, the customer LAN's shown in Figures 4 and 5 read on the content provider. All other limitations are shown in the rejection of claim 1.

As to claim 9, Wide are networks being PSTN's were well known at the time of the applicant's invention (This can be assumed since the applicant does not mention them anywhere in the disclosure expect for in claim 8. If they were not well known the applicant would have to explain them.).

As to claim 10, McDysan teaches a dedicated link to the CPE edge routers (col. 6, lines 49-64).

As to claims 11 and 12, McDysan teaches a the networks of claim 11 and a server for establishing a dedicated route (col. 8, lines 44-54).

As to claims 13 and 14, they rejected for the same reasoning as the preceding claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/
Examiner, Art Unit 2142